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09/936,251	09/07/2001	Bernard Vallee	1490	2488

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6820 La Tijera Blvd Suite 106
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EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,251

Applicant(s)

VALLEE, BERNARD

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 10-11 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities: It appears as if the period in line 6 of claim 10 should be deleted and the capital "T" in "Those" should be changed to a lower case "t". Appropriate correction is requested. *ok*

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not reasonably provide enablement for an intermediate part constituting a rail collaborating with the seat. It is not understood how seat (20) can pivot about horizontal axle (24) and slide along rail (54) of intermediate part (22). It appears as if seat (20) would have to detach in some way from horizontal axle (24) in order to slide along rail (54) and therefore would not be able to pivot about horizontal axle (24). On page 8, lines 15-26, Applicant describes the relationship between rail (54), track (56) and axle (24). It is unclear how seat (20) can pivot about axle (24) and slide along rail (54).

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following words/phrases lack sufficient antecedent basis:

- the angle β (amended claim 5, line 4) *not okay*
- the length (claim 9, line 1) *ok*

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherman (3,594,037). Sherman reveals a cabin attendant chair with a seat (20), an underframe (10) with a longitudinal axis (un-illustrated), a backrest (46) and horizontal axle (24) fixed relative to seat (20). The longitudinal axis (un-illustrated) lies at an angle β parallel to the backrest (46) and connects the upper right corner of under frame (10) in Figure 2 with the lower left corner of underframe (10). Seat (20) comprises a first part (26) and a second part (32)(38). The second part (32)(38) is received through a rectangular opening (unlabeled) located above panel (18). The length of the portion of

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the second part (32)(38) received within underframe (10) is smaller than the diameter of underframe (10) given that no portion of second part (32)(38) extends out the backside of underframe (10). Underframe (10) contains a gas strut (40). Horizontal axle (24) is carried by an intermediate part (28) fixed to the longitudinal axis (un-illustrated) of underframe (10) and rotatable about pivot point (30). Figure 2 reveals, by means of phantom lines, how the distance from horizontal axle (24) to the longitudinal axis of underframe (10) is variable.

The underframe (10) has a first part defined by side supports (12) and a second part (56)(54) telescopically received within the first part defined by side supports (12). The first part defined by side supports (12) takes up the vertical forces exerted by an occupant sitting on seat (20). The second part (56)(54) takes up the horizontal forces exerted by a seat occupant resting their head against the second part (56)(54).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-4 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Sherman (3,594,037). As disclosed above, Sherman reveals all claimed elements without specifically disclosing a distance between about 2 and 15 cm.

It would have been an obvious matter of design choice to specify a distance between the horizontal axle and longitudinal axis to lie between about 2 cm and 15 cm since applicant has not disclosed that this distance solves any stated problem or is for any particular purpose. It appears that the invention would perform equally as well with a distance of 1 cm or 16 cm, which lie outside of the claimed range.

10. Claim 5 is rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Sherman (3,594,037), as applied to claim 2 above in view of Vander Stel et al. (5,026,118). As described above, Sherman discloses all claimed elements with the exception of a rail.

Vander Stel et al. also reveals a rail system (60) consisting of a rail (61) and a rail follower (63) that carries a horizontal pivot point (35). Rail system (60) alters the position of horizontal axle (35) with respect to seat (17) based on the angle at which element (41) is deployed.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the cabin attendant seat of Sherman with the teachings of Vander Stel et al. Attaching a rail (60) to intermediate part (22) and attaching rail follower (63), which would carry horizontal axle (24), to seat (20) would allow for greater seat adjustment capabilities and therefore more comfort for the seat occupant.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman (3,594,037) as applied to claim 1 above, and further in view of Betherum

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(928,929). As disclosed above, Sherman reveals all claimed elements except a work surface.

Betherum teaches the incorporation of a work surface (14) within a telescopically received second element (13) of an underframe (5).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify the cabin attendant seat of Sherman with the teachings of Betherum. Adding a work surface to pivotally fold up from the backside of Sherman's cabin attendant seat would provide a convenient additional surface area for preparing food for flight passengers.

Allowable Subject Matter

12. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment/Arguments

13. The response filed on 3 February 2003 has been fully considered. Remaining issues are detailed in the above sections.

Applicant argues that there is no possibility to determine a fixed rotation axis due to problem i) which states that the aircraft cabin attendant seat is inconspicuous and out of the way when out of use and problem iii) which states that the aircraft attendant seat

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shall resist very high deceleration rates. It is of the Examiner's opinion that term "fixed" is relative. Sherman shows a horizontal axle (24) that is fixed relative to seat (20).

Applicant argues that the problems solved by the seat disclosed by Sherman are unknown in seats for equipping lecture theaters. It is of the Examiner's opinion that the seat disclosed by Sherman could be used in a lecture hall even though it solves additional problems typically unknown in lecture hall seats. The seat disclosed by Sherman folds into a compact, thin profile configuration that would be beneficial in a theater environment to allow for the easy flow of people walking around the theater.

Applicant argues that the chair disclosed by Sherman does not disclose a folding seat acted on by a gas strut serving as a particular mechanism structure. It is of the Examiner's opinion that gas strut (40) revealed by Sherman acts directly on seat (20), aiding in the retraction of the seat as it is tilted upward. Sherman discloses that gas strut (40) "closes seat at a controlled rate when the occupant arises" (column 2, lines 10-11). Gas strut (40) can be considered a mechanism structure.

Applicant argues that the seat disclosed by Vander Stel is not in the same technical field. In response to applicant's argument that the built-in infant seat disclosed by Vander Stel is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art disclosed by Vander Stel is reasonably pertinent in that it applies to a folding seat.

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Applicant further argues that (35) may be a horizontal axle, but it moves with telescopic rod (60). Therefore, horizontal axle is fixed with respect to horizontal rod (60) and therefore still meets the limitations of the claim.

Applicant argues that the combination of the teachings of Sherman and Bethrum seems technically impossible. It is of the Examiner's opinion that it is possible to add a surface (14) extending out of the back of element (56) revealed by Sherman by screwing or welding.

Examiner maintains that the rejections cited in this action are proper.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-1020. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1020.

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SCB

March 19, 2003



Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600